States Army and for appointment to the grade indicated under title 10, U.S.C., section 3036:

To be major general

Brig. Gen. David H. Hicks, 1012

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Brian L. Tarbet, 0965

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Chaplain (Col.) Jerome A. Haberek, 0306

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Michael J. McCabe, 0987

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) John P. Debbout, 9101

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Craig O. McDonald, 8124

ARMY

PN283 Army nominations (13) beginning CHARLES R BAILEY, and ending DAVID W SMARTT, which nominations were received by the Senate and appeared in the Congressional Record of January 29, 2003

FOREIGN SERVICE

PN356–1 Foreign Service nominations (23) beginning Anne H. Aarnes, and ending Edward W. Birgells, which nominations were received by the Senate and appeared in the Congressional Record of February 25, 2003

MARINE CORPS

PN637 Marine Corps nominations (871) beginning BENJAMIN T ACKISON, and ending ROBERT B. ZWAYER, which nominations were received by the Senate and appeared in the Congressional Record of May 14, 2003

NAVY

PN588 Navy nominations (39) beginning AMADO F. ABAYA, and ending SHANNON J. WELLS, which nominations were received by the Senate and appeared in the Congressional Record of May 1, 2003

NOMINATIONS DISCHARGED

Mr. FRIST. Mr. President, in executive session, I ask unanimous consent that the HELP Committee be discharged from further consideration of the following nominations for the National Science Board: Steven Beering, PN44; Ray Bowen, PN46; Elizabeth Hoffman, PN50. I further ask unanimous consent that the Senate proceed to their consideration, the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate resume legislative session.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

NATIONAL SCIENCE BOARD

Steven C. Beering, of Indiana, to be a Member of the National Science Board, National Science Foundation, for the remainder of the term expiring May 10, 2004.

Ray M. Bowen, of Texas, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

Elizabeth Hoffman, of Colorado, to be a Member of the National Science Board, National Science Foundation, for a term expiring May 10, 2008.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. Under the previous order, the Senate will return to legislative session.

ANIMAL DRUG USER FEE ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 104, S. 313.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 313) to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Animal Drug User Fee Act of 2003''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Prompt approval of safe and effective new animal drugs is critical to the improvement of animal health and the public health.

(2) Animal health and the public health will be served by making additional funds available for the purpose of augmenting the resources of the Food and Drug Administration that are devoted to the process for review of new animal drug applications.

(3) The fees authorized by this title will be dedicated toward expediting the animal drug development process and the review of new and supplemental animal drug applications and investigational animal drug submissions as set forth in the goals identified, for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate as set forth in the Congressional Record.

SEC. 3. FEES RELATING TO ANIMAL DRUGS.

Subchapter C of chapter VII of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 379f et seq.) is amended by adding at the end the following part:

[''PART 3—FEES RELATING TO ANIMAL DRUGS]

''PART 4—FEES RELATING TO ANIMAL DRUGS

[''SEC. 738. DEFINITIONS.

[''For purposes of this subchapter:**]**

''SEC. 739. AUTHORITY TO ASSESS AND USE ANIMAL DRUG FEES.

*(a)***]** *DEFINITIONS.—For purposes of this subchapter:*

''(1) The term 'animal drug application' means an application for approval of any new animal drug submitted under section 512(b)(1). Such term does not include either a new animal drug application submitted under section 512(b)(2) or a supplemental animal drug application.

''(2) The term 'supplemental animal drug application' means—

''(A) a request to the Secretary to approve a change in an animal drug application which has been approved; or

''(B) a request to the Secretary to approve a change to an application approved under section 512(c)(2) for which data with respect to safety or effectiveness are required.

''(3) The term 'animal drug product' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved.

''(4) The term 'animal drug establishment' means a foreign or domestic place of business which is at one general physical location consisting of one or more buildings all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form.

''(5) The term 'investigational animal drug submission' means—

''(A) the filing of a claim for an investigational exemption under section 512(j) for a new animal drug intended to be the subject of an animal drug application or a supplemental animal drug application, or

''(B) the submission of information for the purpose of enabling the Secretary to evaluate the safety or effectiveness of an animal drug application or supplemental animal drug application in the event of their filing.

''(6) The term 'animal drug sponsor' means either an applicant named in an animal drug application, except for an approved application for which all subject products have been removed from listing under Section 510, or a person who has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive by the Secretary.

''(7) The term 'final dosage form' means, with respect to an animal drug product, a finished dosage form which is approved for administration to an animal without substantial further manufacturing. Such term includes animal drug products intended for mixing in animal feeds.

''(8) The term 'process for the review of animal drug applications' means the following activities of the Secretary with respect to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions:

''(A) The activities necessary for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(B) The issuance of action letters which approve animal drug applications or supplemental animal drug applications or which set forth in detail the specific deficiencies in animal drug applications, supplemental animal drug applications, or investigational

animal drug submissions and, where appropriate, the actions necessary to place such applications, supplements or submissions in condition for approval.

''(C) The inspection of animal drug establishments and other facilities undertaken as part of the Secretary's review of pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(D) Monitoring of research conducted in connection with the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(E) The development of regulations and policy related to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(F) Development of standards for products subject to review.

''(G) Meetings between the agency and the animal drug sponsor.

''(H) Review of advertising and labeling prior to approval of an animal drug application or supplemental animal drug application, but not such activities after an animal drug has been approved.

''(9) The term 'costs of resources allocated for the process for the review of animal drug applications' means the expenses incurred in connection with the process for the review of animal drug applications for—

''(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees consulted with respect to the review of specific animal drug applications, supplemental animal drug applications, or investigational animal drug submissions, and costs related to such officers, employees, committees, and contractors, including costs for travel, education, and recruitment and other personnel activities,

''(B) management of information, and the acquisition, maintenance, and repair of computer resources,

''(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies, and

''(D) collecting fees under section 739 and accounting for resources allocated for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(10) The term 'adjustment factor' applicable to a fiscal year refers to the formula set forth in section 735(8) with the base or comparator year being 2003.

''(11) The term 'affiliate' refers to the definition set forth in section 735(9).

[''SEC. 739. AUTHORITY TO ASSESS AND USE ANIMAL DRUG FEES.

''[(a)] *(b)* TYPES OF FEES.—Beginning in fiscal year 2004, the Secretary shall assess and collect fees in accordance with this section as follows:

''(1) ANIMAL DRUG APPLICATION AND SUPPLEMENT FEE.—

''(A) IN GENERAL.—Each person that submits, on or after September 1, 2003, an animal drug application or a supplemental animal drug application shall be subject to a fee as follows:

''(i) A fee established in subsection [(b)] *(c)* for an animal drug application; and

''(ii) A fee established in subsection [(b)] *(c)* for a supplemental animal drug application for which safety or effectiveness data are required, in an amount that is equal to 50 percent of the amount of the fee under clause (i).

''(B) PAYMENT.—The fee required by subparagraph (A) shall be due upon submission of the animal drug application or supplemental animal drug application.

''(C) EXCEPTION FOR PREVIOUSLY FILED APPLICATION OR SUPPLEMENT.—If an animal drug application or a supplemental animal drug application was submitted by a person that paid the fee for such application or supplement, was accepted for filing, and was not approved or was withdrawn (without a waiver or refund), the submission of an animal drug application or a supplemental animal drug application for the same product by the same person (or the person's licensee, assignee, or successor) shall not be subject to a fee under subparagraph (A).

''(D) REFUND OF FEE IF APPLICATION REFUSED FOR FILING.—The Secretary shall refund 75 percent of the fee paid under subparagraph (B) for any animal drug application or supplemental animal drug application which is refused for filing.

''(E) REFUND OF FEE IF APPLICATION WITHDRAWN.—If an animal drug application or a supplemental animal drug application is withdrawn after the application or supplement was filed, the Secretary may refund the fee or portion of the fee paid under subparagraph B if no substantial work was performed on the application or supplement after the application or supplement was filed. The Secretary shall have the sole discretion to refund the fee under this paragraph. A determination by the Secretary concerning a refund under this paragraph shall not be reviewable.

''(2) ANIMAL DRUG PRODUCT FEE.—Each person—

''(A) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under Section 510, and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application;

shall pay for each such animal drug product the annual fee established in subsection [(b)] *(c)*. Such fee shall be payable for the fiscal year in which the animal drug product is first submitted for listing under Section 510, or is submitted for relisting under section 510 if the animal drug product has been withdrawn from listing and relisted. After such fee is paid for that fiscal year, such fee shall be payable on or before January 31 of each year. Such fee shall be paid only once for each animal drug product for a fiscal year in which the fee is payable.

''(3) ANIMAL DRUG ESTABLISHMENT FEE.—Each person—

''(A) who owns or operates, directly or through an affiliate, an animal drug establishment, and

''(B) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under Section 510, and

''(C) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application

shall be assessed an annual fee established in subsection [(b)] *(c)* for each animal drug establishment listed in its approved animal drug application as an establishment that manufactures the animal drug product named in the application. The annual establishment fee shall be assessed in each fiscal year in which the animal drug product named in the application is assessed a fee under paragraph (2) unless the animal drug establishment listed in the application does not engage in the manufacture of the animal drug product during the fiscal year. The fee shall be paid on or before January 31 of each year. The establishment shall be assessed only one fee per fiscal year under this section, provided, however, that where a single establishment manufactures both animal drug products and prescription drug products, as defined in section 735(3), such establishment shall be assessed both the animal drug establishment fee and the prescription drug establishment fee, as set forth in section 736(a)(2), within a single fiscal year.

''(4) ANIMAL DRUG SPONSOR FEE.—Each person—

''(A) who meets the definition of an animal drug sponsor within a fiscal year; and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application, a supplemental animal drug application, or an investigational animal drug submission,

shall be assessed an annual fee established under subsection [(b)] *(c)*. The fee shall be paid on or before January 31 of each year. Each animal drug sponsor shall pay only one such fee each fiscal year.

''[(b)] *(c)* FEE AMOUNTS.—Except as provided in subsection [(a)][(1)] *(b)(1)* and subsections [(c)], [(d)], [(f)], and [(g)], *(d), (e), (g), and (h),* the fees required under subsection [(a)] *(b)* shall be established to generate fee revenue amounts as follows:

''(1) TOTAL FEE REVENUES FOR APPLICATION AND SUPPLEMENT FEES.—The total fee revenues to be collected in animal drug application fees under subsection [(a)][(1)][(A)][(i)] *(b)(1)(A)(i)* and supplemental animal drug application fees under subsection [(a)][(1)][(A)][(ii)] *(b)(1)(A)(ii)* shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(2) TOTAL FEE REVENUES FOR PRODUCT FEES.—The total fee revenues to be collected in product fees under subsection [(a)][(2)] *(b)(2)* shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(3) TOTAL FEE REVENUES FOR ESTABLISHMENT FEES.—The total fee revenues to be collected in establishment fees under subsection [(a)][(3)] *(b)(3)* shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(4) TOTAL FEE REVENUES FOR SPONSOR FEES.—The total fee revenues to be collected in sponsor fees under subsection [(a)][(4)] *(b)(4)* shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''[(c)] *(d)* ADJUSTMENTS.—

''(1) INFLATION ADJUSTMENT.—The fees and total fee revenues established in subsection [(b)] *(c)* shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year according to the formula set forth in section 736(c)(1).

''(2) WORKLOAD ADJUSTMENT.—After the fee revenues are adjusted for inflation in accordance with subparagraph (1), the fee revenues shall be further adjusted each fiscal year after fiscal year 2004 to reflect changes in review workload. With respect to such adjustment:

''(A) This adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions submitted to the Secretary. The Secretary shall publish in the Federal Register the fees resulting from this adjustment and the supporting methodologies.

''(B) Under no circumstances shall this workload adjustment result in fee revenues

for a fiscal year that are less than the fee revenues for that fiscal year established in subsection [(b)], *(c)*, as adjusted for inflation under subparagraph [(c)][(1)] *(d)(1)*.

''(3) FINAL YEAR ADJUSTMENT.—For fiscal year 2007, the Secretary may further increase the fees to provide for up to 3 months of operating reserves of carryover user fees for the process for the review of animal drug applications for the first 3 months of fiscal year 2008. If the Food and Drug Administration has carryover balances for the process for the review of animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made. If this adjustment is necessary, then the rationale for the amount of the increase shall be contained in the annual notice setting fees for fiscal year 2007.

''(4) ANNUAL FEE SETTING.—The Secretary shall establish, 60 days before the start of each fiscal year that begins after September 30, 2003, for that fiscal year, animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees based on the revenue amounts established under subsection [(b)] *(c)* and the adjustments provided under this subsection.

''(5) LIMIT.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of animal drug applications.

''[(d)] *(e)* FEE WAIVER OR REDUCTION.—

''(1) IN GENERAL.—The Secretary shall grant a waiver from or a reduction of 1 or more fees assessed under subsection [(a)] *(b)* where the Secretary finds that—

''(A) the assessment of the fee would present a significant barrier to innovation because of limited resources available to such person or other circumstances,

''(B) the fees to be paid by such person will exceed the anticipated present and future costs incurred by the Secretary in conducting the process for the review of animal drug applications for such person,

''(C) the animal drug application or supplemental animal drug application is intended solely to provide for use of the animal drug in—

''(i) a Type B medicated feed (as defined in section 558.3(b)(3) of title 21, Code of Federal Regulations (or any successor regulation)) intended for use in the manufacture of Type C free-choice medicated feeds, or

''(ii) a Type C free-choice medicated feed (as defined in section 558.3(b)(4) of title 21, Code of Federal Regulations (or any successor regulation)),

''(D) the animal drug application or supplemental animal drug application is intended solely to provide for a minor use or minor species indication, or

''(E) the sponsor involved is a small business submitting its first animal drug application to the Secretary for review.

''(2) USE OF STANDARD COSTS.—In making the finding in paragraph (1)(B), the Secretary may use standard costs.

''(3) RULES FOR SMALL BUSINESSES.—

''(A) DEFINITION.—In paragraph (1)(D), the term ''small business'' means an entity that has fewer than 500 employees, including employees of affiliates.

''(B) WAIVER OF APPLICATION FEE.—The Secretary shall waive under paragraph (1)(D) the application fee for the first animal drug application that a small business or its affiliate submits to the Secretary for review. After a small business or its affiliate is granted such a waiver, the small business or its affiliate shall pay application fees for all subsequent animal drug applications and supplemental animal drug applications for which safety or effectiveness data are required in the same manner as an entity that does not qualify as a small business.

''(C) CERTIFICATION.—The Secretary shall require any person who applies for a waiver under paragraph (1)(D) to certify their qualification for the waiver. The Secretary shall periodically publish in the Federal Register a list of persons making such certifications.

''[(e)] *(f)* EFFECT OF FAILURE TO PAY FEES.—An animal drug application or supplemental animal drug application submitted by a person subject to fees under subsection [(a)] *(b)* shall be considered incomplete and shall not be accepted for filing by the Secretary until all fees owed by such person have been paid. An investigational animal drug submission under section 738(5)(B) that is submitted by a person subject to fees under subsection [(a)] *(b)* shall be considered incomplete and shall not be accepted for review by the Secretary until all fees owed by such person have been paid. The Secretary may discontinue review of any animal drug application, supplemental animal drug application or investigational animal drug submission from a person if such person has not submitted for payment all fees owed under this section by 30 days after the date upon which they are due.

''[(f)] *(g)* ASSESSMENT OF FEES.—

''(1) LIMITATION.—Fees may not be assessed under subsection (a) for a fiscal year beginning after fiscal year 2003 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 2003 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection [(a)] *(b)* during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for animal drug applications, supplemental animal drug applications, investigational animal drug submissions, sponsors, animal drug establishments and animal drug products at any time in such fiscal year notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''[(g)] *(h)* CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection [(a)] *(b)* shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to be appropriated to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salary and expenses with such fiscal year limitation. The sums transferred shall be available solely for the process for the review of animal drug applications.

''(2) COLLECTIONS AND APPROPRIATION ACTS.—

''(A) IN GENERAL.—The fees authorized by this section—

''(i) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation for such fiscal year, and

''(ii) shall only be collected and available to defray increases in the costs of the resources allocated for the process for the review of animal drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 2003 multiplied by the adjustment factor.

''(B) COMPLIANCE.—The Secretary shall be considered to have met the requirements of subparagraph (A)(ii) in any fiscal year if the costs funded by appropriations and allocated for the process for the review of animal drug applications—

''(i) are not more than 3 percent below the level specified in subparagraph (A)(ii); or

''(ii)(I) are more than 3 percent below the level specified in subparagraph (A)(ii), and fees assessed for the fiscal year following the subsequent fiscal year are decreased by the amount in excess of 3 percent by which such costs fell below the level specified in subparagraph (A)(ii); and

''(II) such costs are not more than 5 percent below the level specified in subparagraph (A)(ii).

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fees under this section—

''(A) $5,000,000 for fiscal year 2004;

''(B) $8,000,000 for fiscal year 2005;

''(C) $10,000,000 for fiscal year 2006; and

''(D) $10,000,000 for fiscal year 2007;

as adjusted to reflect adjustments in the total fee revenues made under this section and changes in the total amounts collected by animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees.

''(4) OFFSET.—Any amount of fees collected for a fiscal year under this section that exceeds the amount of fees specified in appropriations Acts for such fiscal year shall be credited to the appropriation account of the Food and Drug Administration as provided in paragraph (1), and shall be subtracted from the amount of fees that would otherwise be authorized to be collected under this section pursuant to appropriation Acts for a subsequent fiscal year.

''[(h)] *(i)* COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection [(a)] *(b)* within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''[(i)] *(j)* WRITTEN REQUESTS FOR WAIVERS, REDUCTIONS, AND REFUNDS.—To qualify for consideration for a waiver or reduction under subsection [(d)], *(e)*, or for a refund of any fee collected in accordance with subsection [(a)], *(b)*, a person shall submit to the Secretary a written request for such waiver, reduction, or refund not later than 180 days after such fee is due.

''[(j)] *(k)* CONSTRUCTION.—This section may not be construed to require that the number of full-time equivalent positions in the Department of Health and Human Services, for officers, employees, and advisory committees not engaged in the process of the review of animal drug applications, be reduced to offset the number of officers, employees, and advisory committees so engaged.

''[(k)] *(l)* ADMINISTRATIVE PROCEDURE.—The Secretary shall—

''(1) to the extent practicable, segregate the review of abbreviated new animal drug applications from the process for the review of animal drug applications, and

''(2) adopt other administrative procedures to ensure that review times of abbreviated new animal drug applications do not increase from their current level due to activities under the user fee program.''.

SEC. 4. ACCOUNTABILITY AND REPORTS.

(a) PUBLIC ACCOUNTABILITY.—

(1) CONSULTATION.—In developing recommendations to Congress for the goals and plans for meeting the goals for the process for the review of animal drug applications for the fiscal years after fiscal year 2007, and for the reauthorization of section 738 and 739 of the Federal Food, Drug, and Cosmetic Act (as added by section 3), the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, appropriate scientific and academic experts, veterinary professionals, representatives of consumer advocacy groups, and the regulated industry.

(2) RECOMMENDATIONS.—The Secretary shall—

(A) publish in the Federal Register recommendations under paragraph (1), after negotiations with the regulated industry;

(B) present the recommendations to the Committees referred to in that paragraph;

(C) hold a meeting at which the public may comment on the recommendations; and

(D) provide for a period of 30 days for the public to provide written comments on the recommendations.

(b) PERFORMANCE REPORTS.—Beginning with fiscal year 2004, not later than 60 days after the end of each fiscal year during which fees are collected under part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 2(3) of this Act toward expediting the animal drug development process and the review of the new and supplemental animal drug applications and investigational animal drug submissions during such fiscal year, the future plans of the Food and Drug Administration for meeting the goals, the review times for abbreviated new animal drug applications, and the administrative procedures adopted by the Food and Drug Administration to ensure that review times for abbreviated new animal drug applications are not increased from their current level due to activities under the user fee program.

(c) FISCAL REPORT.—Beginning with fiscal year 2004, not later than 120 days after the end of each fiscal year during which fees are collected under the part described in subsection (a), the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected during such fiscal year for which the report is made.

SEC. 5. SUNSET.

The amendments made by section 3 shall not be in effect after October 1, 2007 and section 4 shall not be in effect after 120 days after such date.

Mr. FRIST. Mr. President, I ask unanimous consent the committee amendments be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendments were agreed to.

The bill (S. 313), as amended, was read the third time and passed, as follows:

S. 313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Animal Drug User Fee Act of 2003''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Prompt approval of safe and effective new animal drugs is critical to the improvement of animal health and the public health.

(2) Animal health and the public health will be served by making additional funds available for the purpose of augmenting the resources of the Food and Drug Administration that are devoted to the process for review of new animal drug applications.

(3) The fees authorized by this title will be dedicated toward expediting the animal drug development process and the review of new and supplemental animal drug applications and investigational animal drug submissions as set forth in the goals identified, for purposes of part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, in the letters from the Secretary of Health and Human Services to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate as set forth in the Congressional Record.

SEC. 3. FEES RELATING TO ANIMAL DRUGS.

Subchapter C of chapter VII of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 379f et seq.) is amended by adding at the end the following part:

''PART 4—FEES RELATING TO ANIMAL DRUGS

''SEC. 739. AUTHORITY TO ASSESS AND USE ANIMAL DRUG FEES.

(a) DEFINITIONS.—For purposes of this subchapter:

''(1) The term 'animal drug application' means an application for approval of any new animal drug submitted under section 512(b)(1). Such term does not include either a new animal drug application submitted under section 512(b)(2) or a supplemental animal drug application.

''(2) The term 'supplemental animal drug application' means—

''(A) a request to the Secretary to approve a change in an animal drug application which has been approved; or

''(B) a request to the Secretary to approve a change to an application approved under section 512(c)(2) for which data with respect to safety or effectiveness are required.

''(3) The term 'animal drug product' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an animal drug application or a supplemental animal drug application has been approved.

''(4) The term 'animal drug establishment' means a foreign or domestic place of business which is at one general physical location consisting of one or more buildings all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form.

''(5) The term 'investigational animal drug submission' means—

''(A) the filing of a claim for an investigational exemption under section 512(j) for a new animal drug intended to be the subject of an animal drug application or a supplemental animal drug application, or

''(B) the submission of information for the purpose of enabling the Secretary to evaluate the safety or effectiveness of an animal drug application or supplemental animal drug application in the event of their filing.

''(6) The term 'animal drug sponsor' means either an applicant named in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510, or a person who has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive by the Secretary.

''(7) The term 'final dosage form' means, with respect to an animal drug product, a finished dosage form which is approved for administration to an animal without substantial further manufacturing. Such term includes animal drug products intended for mixing in animal feeds.

''(8) The term 'process for the review of animal drug applications' means the following activities of the Secretary with respect to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions:

''(A) The activities necessary for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(B) The issuance of action letters which approve animal drug applications or supplemental animal drug applications or which set forth in detail the specific deficiencies in animal drug applications, supplemental animal drug applications, or investigational animal drug submissions and, where appropriate, the actions necessary to place such applications, supplements or submissions in condition for approval.

''(C) The inspection of animal drug establishments and other facilities undertaken as part of the Secretary's review of pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(D) Monitoring of research conducted in connection with the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(E) The development of regulations and policy related to the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(F) Development of standards for products subject to review.

''(G) Meetings between the agency and the animal drug sponsor.

''(H) Review of advertising and labeling prior to approval of an animal drug application or supplemental animal drug application, but not such activities after an animal drug has been approved.

''(9) The term 'costs of resources allocated for the process for the review of animal drug applications' means the expenses incurred in connection with the process for the review of animal drug applications for—

''(A) officers and employees of the Food and Drug Administration, contractors of the Food and Drug Administration, advisory committees consulted with respect to the review of specific animal drug applications, supplemental animal drug applications, or investigational animal drug submissions, and costs related to such officers, employees, committees, and contractors, including costs for travel, education, and recruitment and other personnel activities,

''(B) management of information, and the acquisition, maintenance, and repair of computer resources,

''(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies, and

''(D) collecting fees under section 739 and accounting for resources allocated for the review of animal drug applications, supplemental animal drug applications, and investigational animal drug submissions.

''(10) The term 'adjustment factor' applicable to a fiscal year refers to the formula set forth in section 735(8) with the base or comparator year being 2003.

''(11) The term 'affiliate' refers to the definition set forth in section 735(9).

''(b) TYPES OF FEES.—Beginning in fiscal year 2004, the Secretary shall assess and collect fees in accordance with this section as follows:

''(1) ANIMAL DRUG APPLICATION AND SUPPLEMENT FEE.—

''(A) IN GENERAL.—Each person that submits, on or after September 1, 2003, an animal drug application or a supplemental animal drug application shall be subject to a fee as follows:

''(i) A fee established in subsection (c) for an animal drug application; and

''(ii) A fee established in subsection (c) for a supplemental animal drug application for which safety or effectiveness data are required, in an amount that is equal to 50 percent of the amount of the fee under clause (i).

''(B) PAYMENT.—The fee required by subparagraph (A) shall be due upon submission of the animal drug application or supplemental animal drug application.

''(C) EXCEPTION FOR PREVIOUSLY FILED APPLICATION OR SUPPLEMENT.—If an animal drug application or a supplemental animal drug application was submitted by a person that paid the fee for such application or supplement, was accepted for filing, and was not approved or was withdrawn (without a waiver or refund), the submission of an animal drug application or a supplemental animal drug application for the same product by the same person (or the person's licensee, assignee, or successor) shall not be subject to a fee under subparagraph (A).

''(D) REFUND OF FEE IF APPLICATION REFUSED FOR FILING.—The Secretary shall refund 75 percent of the fee paid under subparagraph (B) for any animal drug application or supplemental animal drug application which is refused for filing.

''(E) REFUND OF FEE IF APPLICATION WITHDRAWN.—If an animal drug application or a supplemental animal drug application is withdrawn after the application or supplement was filed, the Secretary may refund the fee or portion of the fee paid under subparagraph B if no substantial work was performed on the application or supplement after the application or supplement was filed. The Secretary shall have the sole discretion to refund the fee under this paragraph. A determination by the Secretary concerning a refund under this paragraph shall not be reviewable.

''(2) ANIMAL DRUG PRODUCT FEE.—Each person—

''(A) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under section 510, and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application;

shall pay for each such animal drug product the annual fee established in subsection (c). Such fee shall be payable for the fiscal year in which the animal drug product is first submitted for listing under section 510, or is submitted for relisting under section 510 if the animal drug product has been withdrawn from listing and relisted. After such fee is paid for that fiscal year, such fee shall be payable on or before January 31 of each year. Such fee shall be paid only once for each animal drug product for a fiscal year in which the fee is payable.

''(3) ANIMAL DRUG ESTABLISHMENT FEE.—Each person—

''(A) who owns or operates, directly or through an affiliate, an animal drug establishment, and

''(B) who is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product which has been submitted for listing under section 510, and

''(C) who, after September 1, 2003, had pending before the Secretary an animal drug application or supplemental animal drug application,

shall be assessed an annual fee established in subsection (c) for each animal drug establishment listed in its approved animal drug application as an establishment that manufactures the animal drug product named in the application. The annual establishment fee shall be assessed in each fiscal year in which the animal drug product named in the application is assessed a fee under paragraph (2) unless the animal drug establishment listed in the application does not engage in the manufacture of the animal drug product during the fiscal year. The fee shall be paid on or before January 31 of each year. The establishment shall be assessed only one fee per fiscal year under this section, provided, however, that where a single establishment manufactures both animal drug products and prescription drug products, as defined in section 735(3), such establishment shall be assessed both the animal drug establishment fee and the prescription drug establishment fee, as set forth in section 736(a)(2), within a single fiscal year.

''(4) ANIMAL DRUG SPONSOR FEE.—Each person—

''(A) who meets the definition of an animal drug sponsor within a fiscal year; and

''(B) who, after September 1, 2003, had pending before the Secretary an animal drug application, a supplemental animal drug application, or an investigational animal drug submission,

shall be assessed an annual fee established under subsection (c). The fee shall be paid on or before January 31 of each year. Each animal drug sponsor shall pay only one such fee each fiscal year.

''(c) FEE AMOUNTS.—Except as provided in subsection (b)(1) and subsections (d), (e), (g), and (h), the fees required under subsection (b) shall be established to generate fee revenue amounts as follows:

''(1) TOTAL FEE REVENUES FOR APPLICATION AND SUPPLEMENT FEES.—The total fee revenues to be collected in animal drug application fees under subsection (b)(1)(A)(i) and supplemental animal drug application fees under subsection (b)(1)(A)(ii) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(2) TOTAL FEE REVENUES FOR PRODUCT FEES.—The total fee revenues to be collected in product fees under subsection (b)(2) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(3) TOTAL FEE REVENUES FOR ESTABLISHMENT FEES.—The total fee revenues to be collected in establishment fees under subsection (b)(3) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(4) TOTAL FEE REVENUES FOR SPONSOR FEES.—The total fee revenues to be collected in sponsor fees under subsection (b)(4) shall be $1,250,000 in fiscal year 2004, $2,000,000 in fiscal year 2005, and $2,500,000 in fiscal years 2006 and 2007.

''(d) ADJUSTMENTS.—

''(1) INFLATION ADJUSTMENT.—The fees and total fee revenues established in subsection (c) shall be adjusted by the Secretary by notice, published in the Federal Register, for a fiscal year according to the formula set forth in section 736(c)(1).

''(2) WORKLOAD ADJUSTMENT.—After the fee revenues are adjusted for inflation in accordance with subparagraph (1), the fee revenues shall be further adjusted each fiscal year after fiscal year 2004 to reflect changes in review workload. With respect to such adjustment:

''(A) This adjustment shall be determined by the Secretary based on a weighted average of the change in the total number of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions submitted to the Secretary. The Secretary shall publish in the Federal Register the fees resulting from this adjustment and the supporting methodologies.

''(B) Under no circumstances shall this workload adjustment result in fee revenues for a fiscal year that are less than the fee revenues for that fiscal year established in subsection (c), as adjusted for inflation under subparagraph (d)(1).

''(3) FINAL YEAR ADJUSTMENT.—For fiscal year 2007, the Secretary may further increase the fees to provide for up to 3 months of operating reserves of carryover user fees for the process for the review of animal drug applications for the first 3 months of fiscal year 2008. If the Food and Drug Administration has carryover balances for the process for the review of animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made. If this adjustment is necessary, then the rationale for the amount of the increase shall be contained in the annual notice setting fees for fiscal year 2007.

''(4) ANNUAL FEE SETTING.—The Secretary shall establish, 60 days before the start of each fiscal year that begins after September 30, 2003, for that fiscal year, animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees based on the revenue amounts established under subsection (c) and the adjustments provided under this subsection.

''(5) LIMIT.—The total amount of fees charged, as adjusted under this subsection, for a fiscal year may not exceed the total costs for such fiscal year for the resources allocated for the process for the review of animal drug applications.

''(e) FEE WAIVER OR REDUCTION.—

''(1) IN GENERAL.—The Secretary shall grant a waiver from or a reduction of 1 or more fees assessed under subsection (b) where the Secretary finds that—

''(A) the assessment of the fee would present a significant barrier to innovation because of limited resources available to such person or other circumstances,

''(B) the fees to be paid by such person will exceed the anticipated present and future costs incurred by the Secretary in conducting the process for the review of animal drug applications for such person,

''(C) the animal drug application or supplemental animal drug application is intended solely to provide for use of the animal drug in—

''(i) a Type B medicated feed (as defined in section 558.3(b)(3) of title 21, Code of Federal Regulations (or any successor regulation)) intended for use in the manufacture of Type C free-choice medicated feeds, or

''(ii) a Type C free-choice medicated feed (as defined in section 558.3(b)(4) of title 21, Code of Federal Regulations (or any successor regulation)),

''(D) the animal drug application or supplemental animal drug application is intended solely to provide for a minor use or minor species indication, or

''(E) the sponsor involved is a small business submitting its first animal drug application to the Secretary for review.

''(2) USE OF STANDARD COSTS.—In making the finding in paragraph (1)(B), the Secretary may use standard costs.

''(3) RULES FOR SMALL BUSINESSES.—

''(A) DEFINITION.—In paragraph (1)(D), the term ''small business'' means an entity that has fewer than 500 employees, including employees of affiliates.

''(B) WAIVER OF APPLICATION FEE.—The Secretary shall waive under paragraph (1)(D) the application fee for the first animal drug application that a small business or its affiliate submits to the Secretary for review. After a small business or its affiliate is granted such a waiver, the small business or its affiliate shall pay application fees for all subsequent animal drug applications and supplemental animal drug applications for which safety or effectiveness data are required in the same manner as an entity that does not qualify as a small business.

''(C) CERTIFICATION.—The Secretary shall require any person who applies for a waiver under paragraph (1)(D) to certify their qualification for the waiver. The Secretary shall periodically publish in the Federal Register a list of persons making such certifications.

''(f) EFFECT OF FAILURE TO PAY FEES.—An animal drug application or supplemental animal drug application submitted by a person subject to fees under subsection (b) shall be considered incomplete and shall not be accepted for filing by the Secretary until all fees owed by such person have been paid. An investigational animal drug submission under section 738(5)(B) that is submitted by a person subject to fees under subsection (b) shall be considered incomplete and shall not be accepted for review by the Secretary until all fees owed by such person have been paid. The Secretary may discontinue review of any animal drug application, supplemental animal drug application or investigational animal drug submission from a person if such person has not submitted for payment all fees owed under this section by 30 days after the date upon which they are due.

''(g) ASSESSMENT OF FEES.—

''(1) LIMITATION.—Fees may not be assessed under subsection (a) for a fiscal year beginning after fiscal year 2003 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 2003 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection (b) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, for animal drug applications, supplemental animal drug applications, investigational animal drug submissions, sponsors, animal drug establishments and animal drug products at any time in such fiscal year notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''(h) CREDITING AND AVAILABILITY OF FEES.—

''(1) IN GENERAL.—Fees authorized under subsection (b) shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Such fees are authorized to be appropriated to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses appropriation account without fiscal year limitation to such appropriation account for salary and expenses with such fiscal year limitation. The sums transferred shall be available solely for the process for the review of animal drug applications.

''(2) COLLECTIONS AND APPROPRIATION ACTS.—

''(A) IN GENERAL.—The fees authorized by this section—

''(i) shall be retained in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation for such fiscal year, and

''(ii) shall only be collected and available to defray increases in the costs of the resources allocated for the process for the review of animal drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 2003 multiplied by the adjustment factor.

''(B) COMPLIANCE.—The Secretary shall be considered to have met the requirements of subparagraph (A)(ii) in any fiscal year if the costs funded by appropriations and allocated for the process for the review of animal drug applications—

''(i) are not more than 3 percent below the level specified in subparagraph (A)(ii); or

''(ii)(I) are more than 3 percent below the level specified in subparagraph (A)(ii), and fees assessed for the fiscal year following the subsequent fiscal year are decreased by the amount in excess of 3 percent by which such costs fell below the level specified in subparagraph (A)(ii); and

''(II) such costs are not more than 5 percent below the level specified in subparagraph (A)(ii).

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fees under this section—

''(A) $5,000,000 for fiscal year 2004;

''(B) $8,000,000 for fiscal year 2005;

''(C) $10,000,000 for fiscal year 2006; and

''(D) $10,000,000 for fiscal year 2007;

as adjusted to reflect adjustments in the total fee revenues made under this section and changes in the total amounts collected by animal drug application fees, supplemental animal drug application fees, animal drug sponsor fees, animal drug establishment fees, and animal drug product fees.

''(4) OFFSET.—Any amount of fees collected for a fiscal year under this section that exceeds the amount of fees specified in appropriations Acts for such fiscal year shall be credited to the appropriation account of the Food and Drug Administration as provided in paragraph (1), and shall be subtracted from the amount of fees that would otherwise be authorized to be collected under this section pursuant to appropriation Acts for a subsequent fiscal year.

''(i) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (b) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

''(j) WRITTEN REQUESTS FOR WAIVERS, REDUCTIONS, AND REFUNDS.—To qualify for consideration for a waiver or reduction under subsection (e), or for a refund of any fee collected in accordance with subsection (b), a person shall submit to the Secretary a written request for such waiver, reduction, or refund not later than 180 days after such fee is due.

''(k) CONSTRUCTION.—This section may not be construed to require that the number of full-time equivalent positions in the Department of Health and Human Services, for officers, employees, and advisory committees not engaged in the process of the review of animal drug applications, be reduced to offset the number of officers, employees, and advisory committees so engaged.

''(l) ADMINISTRATIVE PROCEDURE.—The Secretary shall—

''(1) to the extent practicable, segregate the review of abbreviated new animal drug applications from the process for the review of animal drug applications, and

''(2) adopt other administrative procedures to ensure that review times of abbreviated new animal drug applications do not increase from their current level due to activities under the user fee program.''.

SEC. 4. ACCOUNTABILITY AND REPORTS.

(a) PUBLIC ACCOUNTABILITY.—

(1) CONSULTATION.—In developing recommendations to Congress for the goals and plans for meeting the goals for the process for the review of animal drug applications for the fiscal years after fiscal year 2007, and for the reauthorization of section 738 and 739 of the Federal Food, Drug, and Cosmetic Act (as added by section 3), the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, appropriate scientific and academic experts, veterinary professionals, representatives of consumer advocacy groups, and the regulated industry.

(2) RECOMMENDATIONS.—The Secretary shall—

(A) publish in the Federal Register recommendations under paragraph (1), after negotiations with the regulated industry;

(B) present the recommendations to the Committees referred to in that paragraph;

(C) hold a meeting at which the public may comment on the recommendations; and

(D) provide for a period of 30 days for the public to provide written comments on the recommendations.

(b) PERFORMANCE REPORTS.—Beginning with fiscal year 2004, not later than 60 days after the end of each fiscal year during which fees are collected under part 3 of subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report concerning the progress of the Food and Drug Administration in achieving the goals identified in the letters described in section 2(3) of this Act toward expediting the animal drug development process and the review of the new and supplemental animal drug applications and investigational animal drug submissions during such fiscal year, the future plans of the Food and Drug Administration for meeting the goals, the review

times for abbreviated new animal drug applications, and the administrative procedures adopted by the Food and Drug Administration to ensure that review times for abbreviated new animal drug applications are not increased from their current level due to activities under the user fee program.

(c) FISCAL REPORT.—Beginning with fiscal year 2004, not later than 120 days after the end of each fiscal year during which fees are collected under the part described in subsection (a), the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the implementation of the authority for such fees during such fiscal year and the use, by the Food and Drug Administration, of the fees collected during such fiscal year for which the report is made.

SEC. 5. SUNSET.

The amendments made by section 3 shall not be in effect after October 1, 2007 and section 4 shall not be in effect after 120 days after such date.

ABRAHAM LINCOLN BICENTENNIAL COMMISSION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 108, S. 858.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 858) to extend the Abraham Lincoln Bicentennial Commission, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 858) was read the third time and passed, as follows:

S. 858

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABRAHAM LINCOLN BICENTENNIAL COMMISSION.

(a) DUTIES.—Section 4 of the Abraham Lincoln Bicentennial Commission Act (36 U.S.C. note prec. 101; Public Law 106–173) is amended—

(1) in paragraph (1)(D), by striking ''redesignation'' and inserting ''rededication''; and

(2) by adding at the end the following:

''(3) To recommend to Congress a plan to carry out the activities recommended under paragraph (2).

''(4) To carry out other related activities in support of the duties carried out under paragraphs (1) through (3).''.

(b) EXTENSION.—Section 8 of such Act (36 U.S.C. note prec. 101; Public Law 106–173) is amended—

(1) in subsection (a), by striking ''The'' and inserting ''In addition to the interim report required under subsection (b), the'';

(2) in subsection (b)—

(A) in the subsection heading, by striking ''FINAL REPORT.—'' and inserting ''REQUIRED INTERIM REPORT.—'';

(B) by striking the first sentence and inserting: ''Not later than June 24, 2004, the Commission shall submit an interim report to Congress.''; and

(C) in the second sentence, by striking ''final''; and

(3) by adding at the end the following:

''(c) FINAL REPORT.—Not later than April 30, 2010, the Commission shall submit a final report to Congress. The final report shall contain final statements, recommendations, and information described under subsection (b)(1), (2), and (3).''.

RECOGNIZING THE 140TH ANNIVERSARY OF THE FOUNDING OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 110, S. Res. 136.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 136) recognizing the 140th anniversary of the founding of the Brotherhood of Locomotive Engineers, and congratulating members and officers of the Brotherhood of Locomotive Engineers for the union's achievements.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider laid upon the table, with no intervening action or debate.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution (S. Res. 136) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 136

Whereas the Brotherhood of Locomotive Engineers was founded on May 8, 1863, as a secret, fraternal labor organization and its first meetings were held clandestinely for fear of reprisals from railroad management;

Whereas the climate toward labor organizations at that time was extraordinarily hostile, and many of the other newly founded labor organizations failed to withstand the negative pressures placed upon them and disbanded in their infancies;

Whereas the Brotherhood of Locomotive Engineers began to thrive despite the climate into which it was born;

Whereas the Brotherhood of Locomotive Engineers has grown from its original 13 members, all from the Michigan Central Railroad, to 59,000 active and retired members employed throughout the United States and Canada;

Whereas the Brotherhood of Locomotive Engineers is North America's oldest rail labor union;

Whereas the Brotherhood of Locomotive Engineers' members have contributed, both directly through their railroad activity and in private capacities, to the war effort in all of the battles of the United States dating back to the Civil War;

Whereas their efforts to improve rail safety for both their members and the public have resulted in a dramatic decrease in the number of railroad accidents in the years since their inception;

Whereas, in 1964, the Brotherhood of Locomotive Engineers launched an apprentice engineer program to assure the Nation of a stable supply of well-trained locomotive engineers, and to assure stable employment and earnings to apprentices;

Whereas, after accepting only promoted locomotive engineers in its early years, the Brotherhood of Locomotive Engineers enlarged its membership goals to include other rail employees;

Whereas, in 1993, the 2,500 member American Train Dispatchers Association officially affiliated with the Brotherhood of Locomotive Engineers in order to unite the two key railway professions that facilitate the efficient and safe movement of passengers and freight;

Whereas, in 1995, the Rail Canada Traffic Controllers union also chose to merge into the Brotherhood of Locomotive Engineers, adding another 700 members;

Whereas, in addition to providing representation for its members, the Brotherhood of Locomotive Engineers aggressively participates in the labor movement with other unions and organizations in promoting the interests of working men and women and their families;

Whereas the Brotherhood of Locomotive Engineers is an extraordinary union whose leadership still works hard every day—just as it did in 1863—to protect members' health and safety, to guard their financial interests, to give them an effective voice on the job, and to ensure dignity, respect, and security for railway workers in the workplace; and

Whereas the efforts of the Brotherhood of Locomotive Engineers are deserving of our attention and admiration: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the union which has made a tremendous contribution to the structural development and building of the United States, and to the well-being of tens of thousands of workers;

(2) congratulates the union for its many achievements and the strength of its members; and

(3) expects that the union will continue its dedicated work and will have an even greater impact in the 21st century and beyond, and will enhance the standard of living and working environment for rail workers and other laborers in generations to come.

AUTHORIZING REPRESENTATION OF SENATE LEGAL COUNSEL

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 156, which was submitted earlier today.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 156) authorizing representation by Senate legal counsel in the case of Judicial Watch, Inc. v. United States Senate, et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The resolution (S. Res. 156) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows: